IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5065 OF 2005

WITH

CIVIL APPLICATION NO.2862 OF 2005

Allahabad Bank ..Petitioner.

Vs.

Prakash Shankar Wagh ..Respondent.

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Mr.P.S.Dani instructed by M/s.Pandya Gandhi & Co. for the Petitioner.

Mr.N.G.Thakkar, Senior Advgocate with Mr.G.C.Mohanty for the Respondent.

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CORAM : F.I.REBELLO, J. AND

DR.D.Y.CHANDRACHUD, J.

3rd April, 2006.

ORAL JUDGMENT (PER DR.D.Y.CHANDRACHUD, J.) :

1. Rule, made returnable forthwith. Counsel

appearing for the Respondent waives service. By consent the matter is taken up for hearing and final disposal.

2. The Respondent instituted a suit for eviction against the Petitioner in December 2000 after the provisions of the Maharashtra Rent Control Act 1999 had come into force. Section 3(1)(b) of the Act provides that the Act shall not apply to any premises let or sublet to banks, any public sector undertaking or corporation established by or under any Central or State Act or to foreign missions, international agencies, multinational companies, and private limited companies and public limited companies having a paid up capital of Rs.1 Crore or more. The Petitioner ceased to have the protection of rent control legislation upon the enactment of the Rent Act of 1999.

3. The foundation of the suit was that the premises were originally granted on lease to the Petitioner by the predecessor-in-title of the Respondent on a monthly rent of Rs.1,200/- and that the lease had expired by efflux of time in 1980.

The Respondent claimed to have terminated the tenancy by a notice dated 22nd August, 2000 on the ground that though the lease had expired by efflux of time, the notice was by way of abundant caution. The Petitioner filed a written statement setting out its defence.

4. The Learned Trial Judge in the Court of Small Causes dismissed the suit by a judgment and order dated 24th January, 2003. The Trial Court noted that the Petitioner had not adduced any evidence. The Court, however, was of the view that the notice dated 22nd August, 2000 did not meet the requirements of a valid notice under Section 106 of the Transfer of Property Act, 1882. This finding was based on the fact that though it was stated in the notice that the Respondent - Plaintiff was giving one month’s calender notice, in the concluding portion of the notice, the Petitioner was called upon to hand over possession of the premises within 15 days of the receipt of the notice. The appeal that was preferred by the Respondent was allowed by the Appellate Bench of the Court of Small Causes on 25th February, 2005. The Appellate Bench took note of the Transfer of

Property (Amendment) Act 2002, which amended the provisions of Section 106 and pursuant to which a lease of immovable property from month to month is terminable on the expiry of 15 days' notice. The transitory provisions contained in Section 3 of the Amending Act provide that the Act shall apply to all notices in pursuance of which a suit or proceeding is pending at the commencement of the Act and also to all notices that were issued before the commencement of the Act but where no suit or proceeding is filed before such commencement.

5. The Petitioner has thereupon filed these proceedings under Article 226 of the Constitution. Apart from challenging the judgment of the Appellate Bench of the Small Causes Court, the Petitioner has in prayer clause (c) of the Petition sought a declaration of unconstitutionality in respect of the transitory provisions made in the Transfer of Property (Amendment) Act 2002. In view of the challenge on the grounds of constitutional validity, the Petition has been placed for hearing before a Division Bench. In so far as the exemption granted by Section 3(1)(b) of the Maharashtra Rent Control Act 1999 is concerned, the

constitutional validity of the provision has been upheld by a Division Bench of this Court in **Crompton Greaves Ltd. v. State of Maharashtra** (2002(2) Bom.C.R.300).

6. Section 106 of the Transfer of Property Act, 1882, prior to its amendment, provided as follows :

> "106. Duration of certain leases in absence of written contract or local usage. - In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months', notice and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy.

> Every notice under this section must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property."

7. The provision as it originally stood required in the case of a lease of immovable property for agricultural or manufacturing purposes (deemed to be a lease from year to year) a notice of termination of six months and in the case of a lease of immovable property for any other purpose (deemed to be a lease from month to month) a notice of termination of 15 days which had to expire with the end of the month of tenancy. A considerable degree of complexity had crept into the law and the validity of notices of termination was invariably challenged on the ground that an adequate notice expiring with the end of the month of tenancy had not been served.

8. The Law Commission of India in its One Hundred and Eighty-First Report dealt with the hardship that has been caused to litigants as a result of the rigidity in the principles enunciated in certain judicial decisions which had caused uncertainty and led to a multiplicity of legislation. The report of the Law Commission observes thus :

> "In several cases, it happens that a lessor or a lessee gives a 15 days' notice, in the case of a tenancy from month to month, terminating the tenancy. Pleas in defence are taken that the notice is defective in the sense that the period of notice falls short by one day, because the person who has given the notice has not taken into account the principle accepted in Mangilal vs. Sugan Chand, AIR 1965 SC 101 that the day on which the notice is served must be excluded though not the day on which the tenancy is sought to be terminated. An issue as to validity of notice is framed invariably in every case. Years after the

> notice and the filing of the suit, the court would be compelled to declare the notice invalid, though the defendant had more than the prescribed time of six months or fifteen days by the date of filing of the suit or by the date of judgment dismissing the suit.
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> In some other cases, there may be a dispute as to the exact date of commencement of tenancy and therefore a further dispute arises as to the date of expiry of the tenancy. The matter will be put in issue and if the date assumed or pleaded by the plaintiff, whether he is the lessor or lessee is not accepted by the court, then the notice becomes invalid, though the defendant had, in fact, more than the prescribed time by the date of filing of the suit or by the date of the judgment."

The Law Commission observed that this technicality was a source of serious injustice to the plaintiff though no prejudice at all would be caused to the defendant having regard to the purpose underlying

Section 106. The Law Commission observed thus :

> "The purpose of the provision in sec. 106 is to terminate the relationship of lessor and lessee before the lessor sues for possession. He has no right of entry till the tenancy is disrupted. Further, the idea is that every lessee must have some reasonable notice before he is asked to vacate the premises.
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> It these were the purposes behind section 106 but in fact, the lessee had, by the date of suit or the date of dismissal of suit years later, more than the period specified, in the statute, it is nothing but injustice to the lessor if he is compelled to file a fresh suit. Any procedure that leads to multiplicity of court cases must be avoided."

The Law Commission hence recommended an amendment to Section 106 and proposed that a retrospective operation should be given to the amended provision, so as to make it apply to all notices issued before

the commencement of the Amending Act where suits or other legal proceedings have been instituted but where the dismissal of the suit or proceedings had not attained finality.

9. The legislature thereupon stepped in by amending the provisions of Section 106 by an Amending Act of 2002. As amended, Section 106 reads thus :

> "106. Duration of certain leases in absence of written contract or local usage - (1) In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on fifteen days' notice."

The transitory provision, Section 3, is as follows:

"3. Transitory provision - The provisions of section 106 of the Principal Act, as amended by section 2, shall apply to -

(a) all notices in pursuance of which any suit or proceeding is pending at the commencement of this Act; and

(b) all notices which have been issued before the commencement of this Act but where no suit or proceeding has been filed before such commencement."

10. The effect of the amendment is to dispense with the requirement that the notice must terminate the tenancy at the end of the month of tenancy.

11. The ground of challenge that has been raised to the amending provisions is that the "law is a substantive law in nature which can never have retrospective effect". Ground (S) of the Petition proceeds on the hypothesis that "retrospective effect can be given only when the same is procedural law and not when the same is substantive

law". According to the Petitioner, the rights of the parties have already been governed by the principles laid down by the unamended provisions of Section 106 at the time when the agreement was entered into. The Petitioner therefore claims to have acquired a right to have the lease terminated only in accordance with the provisions of Section 106 of the Transfer of Property Act, 1888 as it stood prior to its amendment and this according to the Petitioner was crystalised when the lease was executed. In the circumstances, it has been urged that the Section as amended discriminates against persons whose rights are already crystalised before the enforcement of the Amending Act. These submissions will have to be considered.

12. Parliament and the state legislatures have plenary powers of legislation to legislate upon the fields assigned to them. Subject only to constitutional restrictions Parliament and the legislatures of the States can legislate prospectively or retrospectively. As a rule of construction, a statute which deals with substantive rights is prima facie construed to be prospective unless its operation is retrospective

either expressly or by necessary implication. Hence, unless there are words in the statute that would indicate that the intention of the legislature was to affect existing rights a statute enacting a provision of substantive law is construed to be prospective in its operation. In contrast to statutes dealing with what are regarded as substantive matters, statutes governing matters of procedure are presumed to be retrospective unless such a restriction is not textually admissible. However, these are rules of construction and interpretation. These principles of interpretation do not define the limits of constitutional power. The constitutional power extends to enacting legislation both prospective and retrospective.

13. In **Assistant Commissioner of Urban Land Tax, Madras v. Buckingham and Carnatic Co. Ltd**. (AIR 1970 SC 169) a Constitution Bench of the Supreme Court held that as a general proposition, it is not right to say that the imposition of a tax with retrospective effect per se renders the law unconstitutional. The fact that the tax was being imposed with retrospective effect was a relevant

consideration in applying the test of reasonableness to the statute, but that was not conclusive. Having regard to the legislative history of the provision of the Madras Urban Land Tax Act, 1966, the Supreme Court ruled that there was no unreasonableness in the retrospective operation of the new Act. In paragraph 13 of its judgment, the Supreme Court cited with approval an article by Charles B. Hochman published in 73 Harvard Law Review 692 on retrospective legislation and an extract therefrom will be instructive for the purposes of the present case as well :

> "It is necessary that the legislature should be able to cure inadvertent defects in statutes or their administration by making what has been aptly called 'small repairs'. Moreover, the individual who claims that a vested right has arisen from the defect is seeking a windfall since, had the legislature's or administrator's action had the effect it was intended to and could have had, no such right would have arisen. Thus, the interest in the retroactive curing of such a defect in the

> administration of government outweighs the individual's interest in benefiting from the defect....."

14. In **State of Tamil Nadu v. M/s.Arooran Sugars Ltd**. (AIR 1997 SC 1815), the Supreme Court categorically held that the legislatures in India have the constitutional power to enact legislation with retrospective effect and a retrospective law is not per se violative of Article 14. The judgment of the Constitution Bench placed the principle in the following words :

> "The power of the legislature to amend, delete or obliterate a statute or to enact a statute prospectively or retrospectively cannot be questioned and challenged unless the court is of the view that such exercise is in violation of Article 14 of the Constitution. It need not be impressed that whenever any Act or amendment is brought in force retrospectively or any provision of the Act is deleted retrospectively, in this process rights of some are bound to be effected one way or

> the other. In every case, it cannot be urged that the exercise by the legislature while introducing a new provision or deleting an existing provision with retrospective effect per se shall be violative of Article 14 of the Constitution. If that stand is accepted, then the necessary corollary shall be that legislature has no power to legislate retrospectively, because in that event a vested right is effected; of course, in special situation this Court has held that such exercise was violative of Article 14 of the Constitution."

15. These principles were reiterated in a more recent judgment of the Supreme Court in **Virender Singh Hooda v. State of Haryana** ((2004) 12 SCC 5**88).** Mr. Justice Y.K.Sabharwal (as the Learned Chief Justice then was) held that public interest at large is one of the relevant considerations in determining the constitutional validity of retrospective legislation. The Court held that :

> "Every sovereign legislature possesses the

> right to make retrospective legislation. The power to make laws includes power to give it retrospective effect."

16. Once the legislatures in the country - the Union Parliament as well as the State legislatures - are entitled to enact laws with retrospective effect the extent to which retrospectivity should be extended is a matter that lies in the wisdom of the legislature. In **P. Kannadasan v. State of Tamil Nadu** (AIR 1996 SC 2560), the Supreme Court held that :

> "If the Parliament is empowered to make a law with retrospective effect, it is entitled to make the law effective for such anterior period as it thinks appropriate."

17. The background in which an amendment to Section 106 came to be enacted find elaboration in the One Hundred and Eighty-First Report of the Law Commission. The requirement of furnishing a notice expiring with the month of tenancy gave rise to a considerable degree of uncertainty in the law. The object of Section 106 was that before a lessor sues

for possession, there must be a cessation of the relationship of lessor and lessee. The period of notice was intended to give to the lessee a reasonable period before being called upon to vacate the premises. However, the interpretation of Section 106 was not free from complexity and the line of precedent gave rise to rigidities in the application of law that were perhaps unforeseen by the framers of the legislation in 1882. The date on which the notice was served was required to be excluded as a result of the judicial interpretation of Section 106 though not the day on which the tenancy was sought to be terminated. There were disputes in regard to the exact date of the commencement of tenancy which concomitantly gave rise to a dispute in regard to the expiration of the tenancy. Though in the generality of cases suits came to be instituted much after the stipulated period had expired, yet issues were required to be framed and were framed by trial courts across the country on the validity of notices of termination. Apart from breeding delay, there was a multiplicity of litigation since it was always open to the landlord to institute a fresh suit for eviction upon a due and valid termination

of tenancy. This was the state of affairs which Parliament sought to obviate in enacting an amendment to Section 106 of the Transfer of Property Act, 1882. The object of the amendment was to render the law certain and to provide consistency in its application. Certainty and consistency are the ideals - however elusive they may be in practice - for a system governed by the rule of law. The legislature has thus stepped in to correct an obvious deficiency in the law. No litigant can claim to have a vested right in benefiting from the complexities of law or in the confusion that may be generated by ingenious arguments designed to defeat the genuine claim of a plaintiff who sues to recover possession upon the termination of a lease which does not find protection of rent control legislation. Thus the element of public interest must militate against the acceptance of the argument that the amendment is arbitrary or unconstitutional as being in violation of Article 14. Plainly it is not.

18. Parliament was completely within the realm of its plenary powers in determining that the amended provision should have limited

retrospectivity. The retrospectivity that has been conferred is to the extent that the amended provision shall apply to all notices in pursuance of which a suit or proceeding is pending at the commencement of the Amending Act. Similarly, the amending provision applies to notices which have been issued before the commencement of the Act but where no suit or proceeding has been filed before such commencement. The legislature has, therefore, considered it appropriate in its wisdom to extend the application of the amended provision to situations where adjudication has not been concluded on the validity of a notice of termination under Section 106. There is nothing arbitrary or ultra vires therein.

19. For all these reasons we are of the view that there is no merit in the constitutional challenge. Consequently, the Petition in so far as it challenges the order of the Appellate Bench of the Court of Small Causes must also fail since no other challenge on merits has been urged before us to the correctness of the order of the Appellate Bench. The Petition shall in the circumstances stand dismissed. In the circumstances of the case,

however, there shall be no order as to costs.

20. In order to enable the Petitioners to have recourse to their remedies in appeal, there shall be a direction to the effect that the order of eviction shall not be executed until 30th April, 2006.

21. In view of the disposal of the Writ Petition, the Civil Application is rendered infructuous and is accordingly disposed of.

(F.I.REBELLO, J.)

(DR.D.Y.CHANDRACHUD, J.)